<center>**REMARKS**</center>

I.   **Status of the Claims**

Claims 1, 2, 4-14, 16, 18, 20-23, and 28-30 were pending at the time of the Office Action. Claims 1, 11 and 28 have been amended. No claims have been added, withdrawn or cancelled. Therefore, claims 1, 2, 4-14, 16, 18, 20-23, and 28-30 remain pending and under consideration.

II.   **Rejections Under 35 U.S.C. §§ 102 & 103**

   A.   **Rejections Under 35 U.S.C. § 102**

Claims 1, 4, 8, 11, 12, 15, 16, 18, 28, 30 and 31 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent 6,750,039 to Bargoot *et al.* ("Bargoot"). In supporting the rejections, the Examiner ignores limitations relating to claimed features that are "configured to" or "adapted to." Specifically, the Examiner states:

> Regarding claims 1, 11, 28 and 31, these claims include intended use limitations, which do not further delineate the structure of the claimed apparatus from that of the prior art. Since these claims are drawn to an apparatus statutory class of invention, it is the structural limitations of the apparatus, as recited in the claims, which are considered in determining the patentability of the apparatus itself. These intended use limitations <u>are accorded no patentable weight to an apparatus.</u>

Office Action, p. 6 (emphasis in original).

Limitations relating to "a compartment adapted to receive said platform" and a platform "configured to be only partially withdrawn from said container" are not "intended use" limitations, and should be given patentable weight. In past decisions, the Board of Patent Appeals and Interferences ("the Board") has recognized the patentable weight of similar claim language. *See Ex parte Munro*, Appeal No. 2009-003378, slip op. at 7-8 (BPAI July 10, 2009) (non-binding); *Ex parte Scioscio*, Appeal No. 2007-2893, slip op. at 3 and 5 (BPAI Aug. 2, 2007) (non-binding) (reversing obviousness rejection and noting that "adapted for" claim language "is a positive structural limitation, not merely a description of the intended use of the claimed invention"); *Ex parte Boudry*, Appeal No. 2000-1978 at pages 6-7 (BPAI March 27, 2001) (non-binding) (reversing anticipation rejection because "configured to" claim language was structural and distinguished cited reference); see also *In re Venezia*, 530 F.2d 956, 958-59, 189 USPQ 149, 150-52 (CCPA 1976) (reversing Board's affirmance of an indefiniteness

rejection concerning certain functional language over the Board's assertion that "no present positive structural relationships are recited[,]" and explaining that the disputed phrases— including "adapted to be" and "may be"—were limits on the structure of the claimed kit) (emphasis added).

Furthermore, the MPEP also clearly indicates that "adapted to" limitations, and other similar limitations, can "serve to precisely define present structural attributes." Specifically, the MPEP provides:

> In a claim that was directed to a kit of component parts capable of being assembled, the Court held that limitations such as "members adapted to be positioned" and "portions . . . being resiliently dilatable whereby said housing may be slidably positioned" serve to precisely define present structural attributes of interrelated component parts of the claimed assembly. In re Venezia, 530 F.2d 956, 189 USPQ 149 (CCPA 1976).

MPEP §2173.05(g) (emphasis added).

In the present case, certain claim limitations require that the platform or frame is configured to be only partially withdrawn from the container (emphasis added). This language provides structural limitations regarding the amount of withdrawal between the platform and the container. The limitation does not state that the platform will be partially withdrawn from the container during use. Instead the limitation requires the structural attributes necessary so that the platform can only be withdrawn from the container under any circumstances.

As explained in the previous remarks filed by Applicant on June 24, 2009, Bargoot does not disclose a platform or frame configured to be only partially withdrawn from said container. For at least these reasons, Bargoot does not disclose all of the limitations of claims 1, 11, or 28.

In addition, claims 1, 11 and 28 require that the sample is <u>sealed within the compartment</u> in the closed position. Support for this limitation is found at least in the original specification at paragraphs [0011] and [0024] of the published application.

Bargoot, in contrast, discloses a sample <u>sealed from</u> the compartment, rather than a sample sealed within the compartment. *See* Bargoot, col. 7, line 51- col. 8, line 17 and col. 8, lines 50-55. Again, Bargoot does not disclose all of the limitations of claims 1, 11, and 28.

For at least the reasons provided above, claims 1, 11 and 28 are distinguished over Bargoot, and Applicant respectfully requests withdrawal of the rejections. Claims 2, 4-10, 12-14, 16, 18, 20-23, and 30 depend directly or indirectly from claims 1, 11 or 28 and are allowable over the cited reference for at least the reasons provided above for claims 1, 11 and 28.

B. Rejections Under 35 U.S.C. § 103

Claims 6, 7, 20 and 21 are rejected under 35 U.S.C. §103(a) as being unpatentable over Bargoot in view of U.S. Patent 6,818,180 to Douglas *et al.* ("Douglas '180").

Claims 2, 5, 9, 10, 14, 22 and 23 are rejected under 35 U.S.C. §103(a) as being unpatentable over Bargoot in view of U.S. Patent 5,872,713 to Douglas *et al.* ("Douglas '713").

Claims 2, 5, 6, 7, 9, 10, 14, and 20-23 depend either directly or indirectly from claims 1, or 11 and are patentable for at least the reasons provided above for claims 1 and 11.

III. Conclusion

It is believed that the present case is now in condition for allowance. The Examiner is invited to contact the undersigned attorney with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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